

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

BRADLEY SCHWARTZ, M.D.

Holder of License No. 26807
For the Practice of Medicine
In the State of Arizona.

Board Case No. MD-02-0654A

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

(Decree of Censure & Probation)

The Arizona Medical Board ("Board") considered this matter at its public meeting on August 14, 2003. Bradley Schwartz, M.D., ("Respondent") appeared before the Board with legal counsel, Kraig Marton, for a formal interview pursuant to the authority vested in the Board by A.R.S. § 32-1451(H). After due consideration of the facts and law applicable to this matter, the Board voted to issue the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of License No. 26807 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-02-0654A in October 2002 after receiving notification from the United States Attorney for the District of Arizona that a 77 count criminal indictment had been filed against Respondent for prescribing controlled substances to individuals who would divert the substances to Respondent for his own use.

4. During his testimony, Respondent admitted that he had prescribed controlled substances to his patients, not for their own therapeutic use, but for his own use. For instance, of 1,200 doses of Ritalin prescribed to a mother and daughter who were his

1 patients, he diverted 70-80% of the Ritalin for his personal use. Respondent also
2 prescribed controlled substance medications to non-patients who would return the
3 controlled substances to Respondent for his own use.

4 5. Respondent testified that it had been a long road and that he had not seen
5 patients since October 2002. Respondent testified that he did not blame anyone else for
6 his problem, that no one had forced him to take any pills, and that he had a big problem for
7 which he is very sorry. Respondent stated that he felt he had received a lot of good
8 treatment and that he is firmly committed to his recovery. Respondent's counsel stated
9 that on September 11, 2003, Respondent will be sober for two years.

10 6. The standard of care required Respondent to prescribe medications to
11 patients for their own use based on a full record of the patient's condition and medical
12 history.

13 7. Respondent's conduct was unreasonable, given the standard of care, in that
14 he did not prescribe medications to his patients for their own use based on a full record of
15 the patient's condition and the patients to whom Respondent prescribed could have been
16 harmed.

17 CONCLUSIONS OF LAW

18 1. The Arizona Medical Board possesses jurisdiction over the subject matter
19 hereof and over Respondent.

20 2. The Board has received substantial evidence supporting the Findings of Fact
21 described above and said findings constitute unprofessional conduct or other grounds for
22 the Board to take disciplinary action.

23 3. The conduct and circumstances above constitute unprofessional conduct
24 pursuant to A.R.S. § 32-1401(26)(a)¹ ("[v]iolating any federal or state laws or rules and
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¹ Effective September 18, 2003 former A.R.S. § 32-1401(24) was renumbered to A.R.S. § 32-1401(26).

1 regulations applicable to the practice of medicine;") 32-1401(26)(d)("[c]ommitting a felony,
2 whether or not involving moral turpitude;") 32-1401(26)(f)("[h]abitual intemperance in the
3 use of alcohol or habitual substance abuse;") 32-1401(26)(g)("[u]sing controlled
4 substances except if prescribed by another physician for use during a prescribed course of
5 treatment;") 32-1401(26)(j)("[p]rescribing, dispensing or administering any controlled
6 substance or prescription only drug for other than an accepted therapeutic purposes;") 32-
7 1401(26)(q)("[a]ny conduct or practice that is or might be harmful or dangerous to the
8 health of a patient or the public;") and 32-1401(26)(t)("[k]nowingly making any false or
9 fraudulent statement, written or oral, in connection with the practice of medicine.")

10 ORDER

11 Based upon the foregoing Findings of Fact and Conclusions of Law,

12 IT IS HEREBY ORDERED that:

13 1. Respondent is issued a Decree of Censure for prescribing controlled
14 substances to patients and others and then diverting the controlled substances to his own
15 use.

16 2. Respondent is placed on probation for five years with the following terms and
17 conditions:

18 a. Respondent shall submit quarterly declarations under penalty of perjury on
19 forms provided by the Board, stating whether there has been compliance with all
20 conditions of probation. The declarations shall be submitted on or before the 15th of
21 March, June, September and December of each year, beginning on or before December
22 15, 2003.

23 b. Within one year of the effective date of this Order Respondent shall complete
24 the Physician Assessment and Clinical Education Program in narcotics and medical
25 records.

1 c. Respondent shall not prescribe Schedule II or Schedule III medications.
2 After one year Respondent may petition the Board for restoration of his prescribing
3 privileges.

4 d. Respondent shall not maintain or store Schedule II or Schedule III
5 medications on his office or practice.

6 e. Respondent shall promptly enroll in and participate in the Monitored
7 Aftercare Program ("MAP") for the treatment and rehabilitation of physicians who are
8 impaired by alcohol or drug abuse. Respondent shall remain in MAP for five years from
9 the effective date of this Order. Respondent's participation in MAP may be unilaterally
10 terminated with or without cause at the Board's discretion at any time after the issuance of
11 this Order. The terms of Respondent's participation in MAP are as follows:

12 1. **Group Therapy.** Respondent shall attend MAP's group therapy
13 sessions one time per week for the duration of this Order, unless excused by the MAP
14 group therapist for good cause such as illness or vacation. Respondent shall instruct the
15 MAP group therapist to release to the Board, upon its request, all records relating to his
16 treatment, and to submit monthly reports to the Board regarding attendance and progress.
17 The reports shall be submitted on or before the 10th day of each month.

18 2. **12 Step or Self-Help Group Meetings.** Respondent shall attend
19 ninety 12-step meetings or other self-help group meetings appropriate for substance
20 abuse and approved by the Board, for a period of ninety days beginning not later than
21 either (a) the first day following his discharge from chemical dependency treatment or
22 (b) the date of this Order.

23 3. Following completion of the ninety meetings in ninety days,
24 Respondent shall participate in a 12-step recovery program or other self-help program
25 appropriate for substance abuse as recommended by the MAP group therapist and

1 approved by the Board. Respondent shall attend a minimum of three 12-step or other self-
2 help program meetings per week.

3 **4. Board-Approved Primary Care Physician.** Respondent shall
4 promptly obtain a primary care physician and shall submit the name of the physician to
5 Board Staff in writing for approval. The Board-approved primary care physician ("PCP")
6 shall be in charge of providing and coordinating Respondent's medical care and treatment.
7 Except in an *Emergency*, Respondent shall obtain his medical care and treatment only
8 from the PCP and from health care providers to whom the PCP refers Respondent from
9 time to time. Respondent shall request that the PCP document all referrals in the medical
10 record. Respondent shall promptly inform the PCP of his rehabilitation efforts and provide
11 a copy of this Order to that physician. Respondent shall also inform all other health care
12 providers who provide medical care or treatment that he is participating in the Board's
13 rehabilitation program.

14 **5. Medication.** Except in an *Emergency*, Respondent shall take no
15 *Medication* unless his PCP or other health care provider to whom the PCP makes a
16 referral prescribes the *Medication*. Respondent shall not self-prescribe any *Medication*.

17 **6.** If a controlled substance is prescribed, dispensed, or is administered
18 to Respondent by any person other than PCP, Respondent shall notify the PCP in writing
19 within 48 hours. The notification shall contain all information required for the medication
20 log entry specified in paragraph 7. Respondent shall request that the notification be made
21 a part of the medical record. This paragraph does not authorize Respondent to take any
22 *Medication* other than in accordance with paragraph 5.

23 **7. Medication Log.** Respondent shall maintain a current legible log of
24 all *Medication* taken by or administered to him, and shall make the log available to the
25 Board and its Staff upon request. For *Medication* (other than controlled substances) taken

1 on an on-going basis, Respondent may comply with this paragraph by logging the first and
2 last administration of the *Medication* and all changes in dosage or frequency. The log, at a
3 minimum, shall include the following:

- 4 a. Name and dosage of *Medication* taken or administered;
- 5 b. Date taken or administered;
- 6 c. Name of prescribing or administering physician;
- 7 d. Reason *Medication* was prescribed or administered.

8 This paragraph does not authorize Respondent to take any *Medication* other than in
9 accordance with paragraph 5.

10 **8. No Alcohol or Poppy Seeds.** Respondent shall not consume alcohol
11 or any food or other substance containing poppy seeds or alcohol.

12 **9. Biological Fluid Collection.** During all times that Respondent is
13 physically present in the State of Arizona and such other times as Board Staff may direct,
14 Respondent shall promptly comply with requests from Board Staff, the MAP group
15 therapist, or the MAP director to submit to witnessed biological fluid collection. If
16 Respondent is directed to contact an automated telephone message system to determine
17 when to provide a specimen, he shall do so within the hours specified by Board Staff. For
18 the purposes of this paragraph, in the case of an in-person request, "promptly comply"
19 means "immediately". In the case of a telephonic request, "promptly comply" means that,
20 except for good cause shown, Respondent shall appear and submit to specimen collection
21 not later than two hours after telephonic notice to appear is given. The Board in its sole
22 discretion shall determine good cause.

23 **10.** Respondent shall provide Board Staff in writing with one telephone
24 number that shall be used to contact him on a 24 hour per day/seven day per week basis
25 to submit to biological fluid collection. For the purposes of this section, telephonic notice

1 shall be deemed given at the time a message to appear is left at the contact telephone
2 number provided by Respondent. Respondent authorizes any person or organization
3 conducting tests on the collected samples to provide testing results to the Board and the
4 MAP director.

5 11. Respondent shall cooperate with collection site personnel regarding
6 biological fluid collection. Repeated complaints from collection site personnel regarding
7 Respondent's lack of cooperation regarding collection may be grounds for termination
8 from the program.

9 12. **Payment for Services.** Respondent shall pay for all costs,
10 including personnel and contractor costs, associated with participating in the
11 Monitored Aftercare Program at time service is rendered, or within 30 days of each
12 invoice sent to him.

13 13. **Examination.** Respondent shall submit to mental, physical, and
14 medical competency examinations at such times and under such conditions as directed by
15 the Board to assist the Board in monitoring his ability to safely perform as a physician and
16 his compliance with the terms of this Order.

17 14. **Treatment.** Respondent shall submit to all medical, substance
18 abuse, and mental health care and treatment ordered by the Board, or recommended by
19 the MAP director.

20 15. **Obey All Laws.** Respondent shall obey all federal, state and local
21 laws, and all rules governing the practice of medicine in the State of Arizona.

22 16. **Interviews.** Respondent shall appear in person before the Board and
23 its Staff and committees for interviews upon request, upon reasonable notice.

24 17. **Address and Phone Changes, Notice.** Respondent shall
25 immediately notify the Board in writing of any change in office or home addresses and

1 telephone numbers. Respondent shall provide Board Staff at least three business days
2 advance written notice of any plans to be away from office or home for more than five
3 consecutive days. The notice shall state the reason for the intended absence from home
4 or office, and shall provide a telephone number that may be used to contact Respondent.

5 **18. Relapse, Violation.** In the case of chemical dependency relapse by
6 Respondent or Respondent's use of drugs or alcohol in violation of the Order, Respondent
7 shall promptly enter into an Interim Consent Agreement that requires, among other things,
8 that Respondent not practice medicine until such time as he successfully completes an
9 inpatient or residential treatment program for chemical dependency designated by the
10 Board or Staff and obtains affirmative approval to return to the practice of medicine. Prior
11 to approving Respondent's request to return to the practice of medicine, Respondent may
12 be required to submit to witnessed biological fluid collection, undergo any combination of
13 physical examination, psychiatric or psychological evaluation and/or successfully pass the
14 special purpose licensing examination or the Board may conduct interviews for the
15 purpose of assisting it in determining the ability of Respondent to safely return to the
16 practice of medicine. **In no respect shall the terms of this paragraph restrict the**
17 **Board's authority to initiate and take disciplinary action for violation of this Order.**

18 **19. Notice Requirements.**

19 **(A)** Respondent shall immediately provide a copy of this Order to all
20 employers and all hospitals and free standing surgery centers at which he currently has
21 privileges. Within 30 days of the date of this Order, Respondent shall provide the Board
22 with a signed statement that he has complied with this notification requirement. Upon any
23 change in employer or upon the granting of privileges at additional hospitals and free
24 standing surgery centers, Respondent shall provide the employer, hospital or free standing
25 surgery center with a copy of this Order. Within 30 days of a change in employer or upon

1 the granting of privileges at additional hospitals and free standing surgery centers,
2 Respondent shall provide the Board with a signed statement that he has complied with this
3 notification requirement.

4 (B) Respondent is further required to notify, in writing, all employers,
5 hospitals and free standing surgery centers at which Respondent currently has or in the
6 future gains employment or privileges, of a chemical dependency relapse, use of drugs or
7 alcohol in violation of this Order and/or entry into a treatment program. Within seven days
8 of any of these events Respondent shall provide the Board written confirmation that he has
9 complied with this notification requirement.

10 (C) Respondent shall immediately submit to the Board under penalty of
11 perjury, on a form provided by the Board, the name(s) and address(es) of all employers
12 and all hospitals and free standing surgery centers at which he currently holds privileges to
13 practice. Respondent is further required to, under penalty of perjury, on a form provided
14 by the Board, immediately notify the Board of any changes in employment and of any
15 hospitals and free standing surgery centers at which he gains privileges after the effective
16 date of this Order.

17 20. **Public Record.** This Order is a public record.

18 21. **Out-of State.** In the event Respondent resides or practices as a
19 physician in a state other than Arizona, he shall participate in the rehabilitation program
20 sponsored by that state's medical licensing authority or medical society. Respondent shall
21 cause the other state's program to provide written reports to the Board regarding his
22 attendance, participation, and monitoring. The reports shall be due on or before the 15th
23 day of March and September of each year, until the Board terminates this requirement in
24 writing.

25 22. Respondent shall immediately obtain a treating psychiatrist approved

1 by Board Staff and shall remain in treatment with the psychiatrist until further order of the
2 Board. Respondent shall comply with the psychiatrist's recommendations for continuing
3 care and treatment. Respondent shall instruct the psychiatrist to submit quarterly written
4 reports to the Board regarding diagnosis, prognosis, and recommendations for continuing
5 care and treatment. The reports must be submitted on or before the 15th day of March,
6 June, September and December of each year. Respondent shall provide the psychiatrist
7 with a copy of this Order. Respondent shall pay the expenses of all the psychiatric care
8 and is responsible for paying for the preparation of the quarterly reports. After **12 months**,
9 Respondent may submit a written request to the Executive Director requesting that the
10 Board terminate the requirement that Respondent remain in treatment with the
11 psychiatrist. The Board's decision to terminate this requirement will be based, in part,
12 upon the treating psychiatrist's recommendation for continued care and treatment.

13 DEFINITIONS

14 "**Medication**" means "prescription-only drug, controlled substance, and over-the
15 counter preparation, other than plain aspirin and plain acetaminophen."

16 "**Emergency**" means "a serious accident or sudden illness that, if not treated
17 immediately, may result in a long-term medical problem or loss of life."
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19 3. This Order supersedes all previous consent agreements and stipulations
20 between the Board and Respondent.

21 4. The Board retains jurisdiction and may initiate new action based upon any
22 violation of this Order.

23 5. In the event Respondent should leave Arizona to reside or practice or for any
24 reason should Respondent stop practicing medicine in Arizona, Respondent shall notify
25 the Executive Director in writing within 10 days of departure and return or the dates of non-

1 practice within Arizona. Non-practice is defined as any period of time exceeding 30 days
2 during which Respondent is not engaging in the practice of medicine. Periods of
3 temporary or permanent residence or practice outside Arizona or of non-practice within
4 Arizona will not apply to the reduction of the probationary period.

5 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

6 Respondent is hereby notified that he has the right to petition for a rehearing or
7 review. The petition for rehearing or review must be filed with the Board's Executive
8 Director within 30 days after service of this Order. A.R.S. § 41-1092.09. The petition for
9 rehearing or review must set forth legally sufficient reasons for granting a rehearing or
10 review. A.A.C. R4-16-102. Service of this order is effective five (5) days after date of
11 mailing. If a motion for rehearing or review is not filed, the Board's Order becomes
12 effective 35 days after it is mailed to Respondent.

13 Respondent is further notified that the filing of a motion for rehearing or review is
14 required to preserve any rights of appeal to the Superior Court.
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1 DATED this 10th day of October, 2003.

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3 ARIZONA MEDICAL BOARD



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Barry A. Cassidy
BARRY A. CASSIDY, Ph.D., PA-C
Executive Director

ORIGINAL of the foregoing filed this
10th day of October, 2003 with:

The Arizona Medical Board
9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

Executed copy of the foregoing
mailed by U.S. Certified Mail this
10th day of October, 2003, to:

Kraig J. Marton
Jaburg & Wilk, P.C.
3200 N. Central Ave., Suite 2000
Phoenix, Arizona 85012

Executed copy of the foregoing
mailed by U.S. Mail this
10th day of October, 2003, to:

Bradley Schwartz, M.D.
(address of record)

Brenda A. Heli